UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Lykos

Mailed: March 28, 2006

Cancellation No. 92044835

McLaughlin Gormley King Company

v.

Agriguard Company, LLC

Angela Lykos, Interlocutory Attorney

On November 15, 2005, respondent was ordered to show cause why judgment should not be entered against it in accordance with Fed. R. Civ. P. 55(c) for failure to timely answer the petition to cancel. Respondent filed a response thereto on January 11, 2006,[1] stating that it did not receive the petition in a timely manner and that the parties had been engaged in settlement discussions, and concurrently submitting therewith an answer. Respondent's response is construed as a motion to set aside the notice of default and to accept its late-filed answer.

The standard for determining default judgment is found in Fed. R. Civ. P. 55(c), which reads in pertinent part: "for good cause shown the court may set aside an entry of

default." As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where the defendant has a meritorious defense. *See Fred Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.,* 21 USPQ2d 1556 (TTAB 1991). Moreover, the Board is reluctant to grant judgments by default, since the law favors deciding cases on their merits. *See Paolo's Associates Limited Partnership v. Paolo Bodo,* 21 USPQ2d 1899 (Comm'r 1990).

In this instance, we find that respondent has shown cause sufficient to avoid a default judgment. First, there is no evidence that respondent's failure to timely answer the notice of opposition was either willful or the result of gross neglect. Second, the Board can see no prejudice to opposer, other than delay -- which the Board would not characterize as significant -- that would result from accepting respondent's late-filed answer. Furthermore, discovery remains open, and by this order will be extended, giving the parties sufficient time to conduct any necessary fact-finding. Finally, the Board finds that respondent has attempted to set forth a meritorious defense, by way of its

[1] Insofar as petitioner did not object to respondent's late filed response to the show cause order, it has been given full consideration.

"answer." Whether respondent will prevail in this proceeding is, of course, a matter for trial.[2]

In view of the foregoing, the notice of default is hereby discharged, and respondent's answer is noted and accepted for the record.

Trial dates, including the close of discovery, are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	9/1/06
30-day testimony period for party in position of plaintiff to close:	11/30/06
30-dayestimony period for party in position of defendant to close:	1/29/07
15-day rebuttal testimony period to close:	3/15/07

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.l25.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.

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[2] When parties are involved in settlement discussions, the better practice is to file a stipulation to suspend proceedings.